

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA §
§
v. § CRIMINAL NO. 4:16CR108 ALM/KPJ
§
BRIAN WILLIAM JOHNSON §

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the Government's request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on March 22, 2017, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Kevin McClendon.

On August 7, 2013, Defendant was sentenced by the Honorable Vicki Miles-LaGrange, United States District Judge of the Western District of Oklahoma, to a sentence of forty (40) months imprisonment followed by a three (3) year term of supervised release for the offense of Conspiracy to Possess with Intent to Distribute and Distribute Methylone. Defendant began his term of supervision on September 7, 2016. This case was transferred to the Eastern District of Texas and assigned to the Honorable Amos L. Mazzant on September 7, 2016.

On March 15, 2017, the U.S. Probation Officer filed a First Amended Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 15). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from any unlawful use of a controlled substance; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess,

use, distribute, or administer any controlled substance or paraphernalia related to any controlled substances, except as prescribed by a physician; and (4) Defendant shall participate in a program of substance abuse aftercare at the direction of the probation officer to include urine, breath, or sweat patch testing; and outpatient treatment. Defendant shall totally abstain from the use of alcohol and other intoxicants both during and after the completion of any treatment program. Defendant shall not frequent bars, clubs, or other establishments where alcohol is the main business. The court may order Defendant to contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.

The Petition alleges that Defendant committed the following violations: (1) On September 9, 2016, Defendant was arrested for Assault Causing Bodily Injury Family Violence for an incident which occurred on or about September 2, 2016, in Flower Mound, Texas; (2) On September 9, 2016, Defendant was arrested for Criminal Mischief for an incident which occurred on or about September 2, 2016, in Flower Mound, Texas. The matter remains pending at this time; (3) On February 24, 2017, Defendant was arrested for Driving While Intoxicated by the University of North Texas Police Department. On February 25, 2017, Defendant was released on a \$1,500 bond. The charge remains pending at this time; (4) On March 10, 2017, Defendant was arrested for Criminal Mischief >=\$2,500 <\$30K by Flower Mound Police Department. According to the offense report, Defendant became angry and destroyed multiple televisions and other items at Defendant's parents' residence. On March 11, 2017, Defendant was released on a \$2,500 bond. As of this writing, this charge remains pending; (5) Defendant submitted urine samples which tested positive for marijuana on March 4, and May 24, 2016. Both tests were confirmed through laboratory testing; (6) Defendant failed to submit urine samples as directed by the random UA line on February 29, March 23, May

4, and August, 2016; (7) Defendant failed to attend scheduled substance abuse treatment sessions on April 7 and 14, May 5, June 23, and June 27, 2016; and (8) According to the offense report from the DWI arrest on February 24, 2017, Defendant admitted to drinking two 12-ounce beers.

At the hearing, Defendant entered a plea of true to a portion of Allegation 1 as to the March 10, 2017, Criminal Mischief. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, and having considered the arguments presented at the March 21, 2017, hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, with no supervised release to follow. The Court recommends Defendant participate in the Bureau of Prisons' 40 hour program for drug abuse and that Defendant receive mental health treatment while in custody. The Court further recommends that Defendant's term of imprisonment be carried out in FCI Seagoville, if appropriate.

SIGNED this 10th day of April, 2017.



KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE